



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

LARRY JAMES TYLER,
Petitioner,

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CIVIL ACTION NO. 9:22-01623-MGL-MHC

DIRECTOR OF THE DARLINGTON
COUNTY DETENTION CENTER,
Respondent.

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
AND DENYING RESPONDENT'S AND PETITIONER'S
MOTIONS TO DISMISS**

As a preliminary matter, the Court notes that Petitioner Larry James Tyler (Tyler) has filed an interlocutory appeal in this case. The Fourth Circuit, however, may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). The “provisional decisions” Tyler seeks to appeal are neither final orders nor appealable interlocutory or collateral orders. Therefore, it necessarily follows that this Court retains jurisdiction over this case.

Tyler filed this 28 U.S.C. § 2254 petition against Respondent Director of the Darlington County Detention Center (the Director). The Court has jurisdiction over the matter in accordance with 28 U.S.C. § 1331.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting the Director’s motion to dismiss the petition and Tyler’s

motion to dismiss the Director's motion to dismiss be denied. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on May 2, 2023, and the Clerk entered Tyler's objections on May 18, 2023. The Court has carefully considered the objections, but holds them to be without merit. It will therefore enter judgment accordingly.

In Tyler's objections, he fails to present any convincing reason why the Court should decline to adopt the Magistrate Judge's suggestion that the two motions to dismiss be denied. Therefore, the Court will overrule the objections.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Tyler's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of the Court that both Respondent's and Petitioner's motions to dismissed are **DENIED**.

IT IS SO ORDERED.

Signed this 22nd day of May, 2023, in Columbia, South Carolina.

s/ Mary Geiger Lewis

MARY GEIGER LEWIS

UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Tyler is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to the Federal Rules of Appellate Procedure.